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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/059,400	01/31/2002	S. Christopher Early		6086
7590	12/03/2003		EXAMINER	
S CHRISTOPHER EARLY 4341 HARRIS VALLEY RD ATLANTA, GA 30327			GRUNBERG, ANNE MARIE	
			ART UNIT	PAPER NUMBER
			1661	

DATE MAILED: 12/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/059,400	EARLY, S. CHRISTOPHER	
	Examiner Anne Marie Grunberg	Art Unit 1661	

-- The MAILING DATE of this communication appears in the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 30 June 2003.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 30 June 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) Notice of References Cited (PTO-892)                            4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.                    6) Other: \_\_\_\_\_

**DETAILED ACTION**

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

Applicant is advised of the availability of the publication "Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office." This publication is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

***Drawings and amendment***

You have submitted three color drawings (photos). However the amendment and drawings were sent to the Washington address. Mail received at this address is irradiated due to the anthrax scare. Unfortunately, photographs that are irradiated disintegrate. All three of the photographs you sent were irradiated and have disintegrated. As a result, new photographs are required. Please see below for information as to where your amendment and photographs should be sent.

Effective May 1, the address was changed to P.O. Box 1450, Alexandria, VA 22313-1450. This information may be found at the web site  
<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/addresschange.htm>.

You should also send your amendment including a substitute specification, marked up version of the specification, your remarks and any other correspondence to the above address.

Claim 1 remain rejected under 35 U.S.C. 112, first and second paragraphs for the reasons stated below. The following items still need to be addressed in order for the botanical description to be as complete as is reasonably possible:

A. The specification must indicate that the plant is genetically stable as evidenced by the fact that asexual progeny have shown that the tree retains its genetic character even after reproduction has occurred.

B. The color designations for at least the trunk, branches, flower buds, flower sex organs such as anthers, stamen, stigma, style, and pollen, peduncle and petiole need to be set forth.

C. A complete description of the leaf and leaf margin shape, leaf width, bud size, bud texture, and flower organs including shape and number of various organs such as anthers, stamen, stigma, and style. Although it was pointed out that pollen does not occur, the number and description of the anthers and stamen is appropriate. Additionally, the pedicel length, petiole length and individual petal dimensions should be included.

The above listing may not be complete. Applicant should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United Sates Plant Patent protection is sought.

#### **Future Correspondence**

Any inquiry concerning this communication from the Examiner should be directed to Anne Marie Grünberg whose telephone number is (703) 305-0805. The Examiner can normally

be reached Monday through Thursday from 6:00 am to 3:30 pm and alternate Fridays from 7:00 am to 3:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached at (703) 308-4205. The fax phone number for the group is (703) 305-3014 or 308-4242.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.



**ANNE MARIE GRUNBERG**  
PATENT EXAMINER